

Memorandum for Benigno G. Reyna
 Subject: Origination of Special Administrative Measures
 Pursuant to 28 C.F.R. § 501.3 for Federal
 pre-Trial Detainee Zacarias Moussaoui

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Exhibit A

SPECIAL ADMINISTRATIVE MEASURES (SAM)

Pursuant to 28 C.F.R. § 501.3

USMS Inmate - Zacarias Moussaoui ("Moussaoui" or "inmate").

1. General Provisions:

- a. **Adherence to Usual United States Marshals Service (USMS) Policy Requirements** - In addition to the below-listed SAM, the inmate must comply with all usual USMS policies regarding restrictions, activities, privileges, communications, etc. If there is a conflict between USMS policies and the SAM, as set forth herein, where the SAM is more restrictive than usual USMS policies, then the SAM shall control. If usual USMS policies are more restrictive than the SAM, then USMS policies shall control.
- b. **Interim SAM Modification Authority** - During the term of this directive, the Director, Office of Enforcement Operations (OEO), Criminal Division, U.S. Department of Justice, may modify the inmate's SAM as long as any SAM modification authorized by OEO:
 - i. Does not create a more restrictive SAM;
 - ii. Is not in conflict with the request of the U.S. Attorney for the Eastern District of Virginia (USA/EDVA), Federal Bureau of Investigation (FBI), or USMS, or applicable regulations [outside of the then-applicable SAM memorandum]; and
 - iii. Is not objected to by the USA/EDVA, FBI, or USMS.
- c. **Inmate Communications Prohibitions** - The inmate is limited, within USMS's reasonable efforts and existing confinement conditions, from having contact with other inmates and others (except as noted in this document) that could reasonably foreseeably result in the inmate's communicating information (sending or receiving) that could circumvent the SAM's intent of significantly limiting the inmate's ability to communicate (send or receive) terrorist information.
 - i. The inmate is prohibited from passing or receiving any written or recorded communications to or from any other inmate, visitor, attorney, or anyone

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else except as outlined and allowed by this document.

- d. Use of Interpreters/Translators - Translator approval requirement:
 - i. USMS may use translators as necessary for the purpose of facilitating communication with the inmate.
 - ii. No person shall act as a translator without prior written clearance/approval from FBI, which shall only be granted after consultation with the FBI and USA/EDVA.
 - iii. Translators shall not be allowed to engage in, or overhear, unmonitored conversations with the inmate. Translators shall not be alone with the inmate, either in a room or on a telephone or other communications medium.

2. Attorney/Client Provisions:

- a. Attorney¹ Affirmation of Receipt of the SAM Restrictions Document - The inmate's attorney (or counsel)--individually by each if more than one--must sign an affirmation acknowledging receipt of the SAM restrictions document. The Federal Government expects that the attorney, the attorney's staff, and anyone else at the behest of, or acting on behalf of, the attorney, will fully abide by the SAM outlined in this document; that expectation is set forth in the SAM restrictions document.

¹ The term "attorney" refers to the inmate's attorney of record, who has been verified and documented by the USA/EDVA, and who has received and acknowledged receipt of the SAM restrictions document. As used in this document, "attorney" also refers to more than one attorney where the inmate is represented by two or more attorneys, and that the provisions of this document shall be fully applicable to each such attorney in his/her individual capacity.

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- i. The USA/EDVA shall present, or forward, the "attorney affirmation of receipt of the SAM restrictions document" to the inmate's attorney.
 - ii. After initiation of SAM and prior to the inmate's attorney being permitted to have attorney/client-privileged contact with the inmate, the inmate's attorney shall execute a document affirming the receipt of the SAM restrictions document and return the original to the USA/EDVA.
 - iii. The USA/EDVA shall maintain the original of the SAM acknowledgment document and forward a copy of the signed document to OEO in Washington, DC.
- b. Attorney Use of Interpreters/Translators -
- i. Necessity Requirement - No translator shall be utilized unless absolutely necessary where the inmate does not speak a common language with the attorney.
 - ii. Attorney Immediate Presence Requirement - Any use of a translator by the attorney shall be in the physical and immediate presence of the attorney--in the same room. The attorney shall not patch through telephone calls, or any other communication, to or from the inmate.
 - iii. Translation of Inmate's Correspondence - An attorney of record may only allow a federally-approved translator to translate the inmate's correspondence as necessary for attorney/client-privileged communication.
- c. Attorney/Client-Privileged Visits - May be contact or noncontact in the discretion of the DF.
- d. Defense Counsel May Disseminate Inmate Conversations - The inmate's attorney may disseminate the contents of the inmate's communications to third parties for the sole purpose of preparing the inmate's defense--and not for any other reason--on the understanding that any such dissemination shall be made solely by the inmate's counsel, and not by the counsel's staff.

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- e. **Unaccompanied Attorney's Precleared² Co-counsel or Paralegal(s)³ May Meet With Client** - The inmate's attorney's precleared co-counsel or paralegal(s) may meet with the client/inmate without the necessity of the inmate's attorney being present. An investigator or translator may not meet alone with the inmate. These meetings may be contact or noncontact in the discretion of the DF.
- f. **Precleared Translators May Accompany Attorney's Precleared Co-Counsel or Paralegal(s)** - When necessary, a precleared translator may meet with the inmate in the presence of the inmate's attorney's precleared co-counsel or paralegal(s) without requiring the presence of the inmate's attorney. These meetings may be contact or noncontact in the discretion of the DF.
- g. **Simultaneous Multiple Legal Visitors** - The inmate may have multiple legal visitors provided that the multiple legal visitors consist of the inmate's attorney or precleared staff member. These meetings may be contact or noncontact in the discretion of the DF.
- h. **Legally-Privileged Telephone Calls** - The following rules refer to all legally-privileged telephone calls or communications:

² "Prcleared" when used with regard to an attorney's staff, or "precleared staff member," refers to a co-counsel, paralegal, investigator, or a translator, who is actively assisting the inmate's attorney with the inmate's defense, who has submitted to a background check by the FBI and USA/EDVA, who has successfully been cleared by the FBI and USA/EDVA, and who has received a copy of the inmate's SAM and has agreed--as evidenced by his/her signature--to adhere to the SAM restrictions and requirements. As used in this document, "staff member" also refers to more than one staff member, and the provisions of this document shall be fully applicable to each such staff member in his/her individual capacity.

³ A "paralegal" will also be governed by any additional USMS rules and regulations concerning paralegals.

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- i. **Defense Counsel's Precleared Staff May Participate in Inmate Telephone Calls** - The inmate's attorney's precleared staff are permitted to communicate directly with the inmate by telephone.
- ii. **Potential Defense Witness's Telephonic Communications With Inmate** - Potential expert or fact witnesses may telephonically communicate with the inmate under the following conditions:
 - (1) The witness's identity is confirmed and his/her name is cleared by the FBI and the USA/EDVA.
 - (2) The inmate's attorney (not just the attorney's staff) is present (in the same room as the witness) for and participating in the telephone call with the inmate.
 - (3) Any conversation that is not in the English language will be contemporaneously translated (by a precleared translator).
- iii. **Inmate's Initiation of Legally-Privileged Telephone Calls** - Inmate-initiated telephone communications with his attorney or precleared staff are to be placed by a USMS staff member and the telephone handed over to the inmate only after the USMS staff member confirms that the person on the other end of the line is the inmate's attorney or precleared staff member. This privilege is contingent upon the following additional restrictions:
 - (1) The inmate's attorney will not allow any nonprecleared person to communicate with the inmate, or to take part in and/or listen to

If an inmate's attorney does not wish to divulge a potential witness's identity to the prosecutors or their investigators, then the FBI and USA/EDVA shall create a "firewall" to accommodate the defense attorney's desire for secrecy while simultaneously allowing for the FBI to perform a background check and clearance on the proposed witness.

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or overhear any communications with the inmate.

- (2) The inmate's attorney must instruct his/her staff that:
 - (a) The inmate's attorney and precleared staff are the only persons allowed to engage in communications with the inmate.
 - (b) The attorney's staff (including the attorney) are not to patch through, forward, transmit, or send the inmate's communications through to third parties, except as specifically authorized by this document.
- (3) No telephone call/communication, or portion thereof, except as specifically authorized by this document:
 - (a) Is to be overheard by a third party⁵.
 - (b) Will be patched through, or in any manner forwarded or transmitted to a third party.
 - (c) Shall be divulged in any manner to a third party.
 - (d) Shall be in any manner recorded or preserved.⁶ The inmate's attorney may

⁵ For purposes of the SAM, "third party" does not include officials of the USMS, FBI, Immigration and Naturalization Service (INS), Department of Justice (DOJ), or others when made in connection with their official duties. This section does not allow monitoring of attorney/client privileged communications.

⁶ Except by USMS, FBI, INS, DOJ, or other duly authorized federal authorities. This section does not allow monitoring of attorney/client privileged communications.

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make written notes of attorney/client-
privileged communications.

- (4) If USMS, FBI, or USA/EDVA determine that any call or portion of a call involving the inmate contains any indication of a discussion of illegal activity or actual or attempted circumvention of SAM, the inmate's telephone privileges may be negatively impacted.
 - (5) If FBI determines that the inmate has used or is using the opportunity to make a legal call to speak with another inmate, the inmate's ability to contact his attorney by telephone may be suspended or eliminated.
- i. Inmate's Attorney May Provide Documents to the Inmate - The inmate's attorney may provide his/her client with the following additional items: discovery materials, court papers (including indictments, court orders, motions, etc.), materials determined by the inmate's counsel to be material to the preparation of the inmate's defense, and/or material prepared by the inmate's defense team and reviewed by the inmate's counsel, so long as any of the foregoing documents are translated by a precleared translator.
- i. : None of the materials provided may include inflammatory or materials inciting to violence or military training materials unless such materials have been pre-cleared by the USA/EDVA and the FBI.
 - ii. The USA/EDVA may authorize additional documents to be presented to the inmate. If any document not listed or described above needs to be transmitted to the inmate, consent for the transmission of the document can be obtained from the USA/EDVA without the need to formally seek approval for an amendment to the SAM.
- j. Inmate to Return Writing and Drawing Materials to Counsel - The inmate's attorney, or the attorney's precleared staff, may provide the inmate with writing or drawing materials as long as the attorney, or his/her staff, retain such materials and the writings/drawings pertain to preparation of the

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inmate's defense and are only further disseminated by the attorney to third parties as reasonably necessary for purposes solely related to the preparation of the inmate's defense.

- i. All such materials must be shown to the USMS staff before being provided to the inmate.
- ii. None of the materials provided may include pens, pencils, or other instruments which can be used to harm others.
- k. Legal Mail - The inmate's attorney may not send, communicate, distribute, or divulge the inmate's mail, or any portion of its contents (legal or otherwise), to third parties.
 - i. In signing the SAM acknowledgment document, the inmate's attorney, and precleared staff, will acknowledge the restriction that only inmate case-related documents will be presented to the inmate, and that the attorney will not forward third-party mail that the inmate may present to the attorney.
- 3. Inmate's Consular Contacts - The inmate is a citizen of France. The inmate shall be allowed Consular communications and visits. The Consular contacts shall comply with the U.S. Department of State Consular notification and access requirements.
- 4. Inmate's (Nonlegal) Contacts:
 - a. (Nonlegal) Telephone Contacts -
 - i. Telephone Call Limits -

⁷ See, Consular Notification and Access, Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them, U.S. Department of State (DOS). DOS contact: Ms. Kathleen A. Wilson, Attorney-Advisor, Office of the Assistant Legal Advisor for Consular Affairs, DOS, telephone (202) 647-0816.

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- (1) The inmate is limited to nonlegal telephone calls only to/from his immediate family members.⁸
- (2) The quantity and duration of the inmate's nonlegal telephone calls with his immediate family members shall be set by USMS and FBI.

ii. Rules--Telephone Calls - The following rules refer to all nonlegally-privileged and nonconsular-privileged telephone calls or communications:

- (1) No telephone call/communication, or portion thereof,
 - (a) Is to be overheard by a third party.
 - (b) Is to be patched through, or in any manner forwarded or transmitted, to a third party.
 - (c) Shall be divulged in any manner to a third party.
 - (d) Shall be in any manner recorded or preserved.⁹

iii. Telephone SAM Restriction Notifications - For all nonlegal and nonconsular telephone calls to the inmate's immediate family member(s):

- (1) USMS shall inform the inmate of the telephone SAM restrictions prior to each telephone call.
- (2) USMS shall verbally inform the inmate's immediate family member(s) on the opposite

⁸ The inmate's "immediate family members" are defined as the inmate's (USMS/FBI-verifiable) spouse, natural children, parents, and siblings.

⁹ Except by USMS, FBI, INS, DOJ, or other duly authorized federal authorities. This section does not allow monitoring of attorney/client or consular privileged communications.

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end of the inmate's telephone communication
of the telephone SAM. USMS is only required
to notify the inmate's communication
recipient in English.

- (3) USMS shall document each such telephone SAM
notification.

iv. Family Call Monitoring -

- (1) A call with the inmate's immediate family member(s) shall be:
 - (a) Contemporaneously monitored (as directed by the FBI).
 - (b) Contemporaneously recorded (as directed by the FBI) in a manner that allows such telephone call to be analyzed for indications the call is being used to pass messages soliciting or encouraging acts of violence or other crimes, or to otherwise attempt to circumvent the SAM.
- (2) Each inmate/immediate family member telephone call shall be provided by USMS on a single, individual, cassette tape (per call) for forwarding to the FBI. These recordings shall be forwarded to the FBI (as directed by the FBI) on a call-by-call basis as soon as practicable after each call. It is anticipated that there will be a very low volume of calls. Accordingly, call-by-call forwarding of the tape cassettes to the FBI should not be burdensome.

v. Improper Communications - If telephone call monitoring or analysis reveals that any call or portion of a call involving the inmate contains any indication of a discussion of illegal activity, the soliciting or encouraging of acts of violence or terrorism, or actual or attempted circumvention of SAM, the inmate shall be permitted no further calls to his immediate family members for a time period to be determined by USMS. If contemporaneous monitoring reveals such inappropriate activity, the telephone call shall be immediately terminated.

b. (Nonlegal/Nonconsular) Visits -

- i. Limited Visitors - The inmate shall be permitted to visit only with his immediate family members.

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- ii. **English Requirement** - All (other than attorney/client-privileged) communications during inmate visits will be in the English language unless a fluent FBI/USMS-approved translator is readily available to contemporaneously monitor the communication/visit.
- iii. **Visit Criteria** - All nonlegal/nonconsular visits will be:
 - (1) Permitted only after USMS/FBI confirms the proposed visitor's identity and immediate family member relationship to the inmate.
 - (2) Closely monitored by USMS/FBI.
 - (3) Permitted only with a minimum of 14 calendar days advance written notice to the USMS facility where the inmate is housed.
 - (4) Without any physical contact. All such meetings shall be noncontact to protect against harm to visitors or staff should the inmate attempt to take hostages.
 - (5) Limited to one visitor at a time.
- c. **(Nonlegal/Nonconsular) Mail** - Any mail not clearly and properly addressed to/from the inmate's attorney and marked privileged, or consular mail (incoming or outgoing):
 - i. **Copied** - Shall be copied (including the surface of the envelope) by the warden, or his/her designee, of the facility in which the inmate is housed.
 - ii. **Forwarded** - Shall be forwarded, in copy form, to the location designated by the FBI.
 - iii. **Analyzed** -
 - (1) After government analysis and approval, the inmate's outgoing nonlegal mail will be forwarded to the inmate's attorney for ultimate dispersal.

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(2) The Federal Government will forward the inmate's non-legal mail to the inmate's attorney after a review and analysis period not to exceed:

- (a) Five (5) business days for mail which is written entirely in the English language.
- (b) Ten (10) business days for any mail which includes writing in any language other than English, to allow for translation.
- (c) Thirty (30) business days for any mail where the Federal Government has reasonable suspicion to believe that a code was used, to allow for decoding.

iv. Mail Seizure - If outgoing/incoming mail is determined by USMS or FBI to contain overt or covert discussions of or requests for illegal activities, the soliciting or encouraging of acts of violence or terrorism, or actual or attempted circumvention of SAM, the mail shall not be delivered/forwarded. The inmate shall be notified in writing of the seizure of any mail.

5. Communication With News Media:

- a. The inmate will not be permitted to talk with, meet with, correspond with, or otherwise communicate with any member, or representative, of the news media, in person, by telephone, by furnishing a recorded message, through the mail, through his attorney, through a third party, or otherwise.

6. No Group Recreation, Group Prayer:

- a. The inmate shall not be allowed to recreate with other inmates.
- b. The inmate shall not be allowed to engage in group prayer with other inmates.
- c. If an approved imam (or other religious representative) hired by the USMS is to be present for prayer with the

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inmate, the prayer shall be conducted as part of a
noncontact visit to prevent the imam from being harmed
or taken hostage.

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7. No Communal Cells; No Communication Between Cells:

- a. The inmate shall not be allowed to share a cell with another inmate.
- b. The inmate shall not be allowed to communicate with any other inmate by making statements audible to other inmates or by sending notes to other inmates.

8. Recordings Conversations Between Cells:

- a. USMS and the FBI are hereby authorized to place microphones in the hallways and elsewhere outside the inmate's cell to record any statements made by the inmate to other inmates or staff.
- b. Any recordings generated under this section shall ONLY be reviewed by a firewall team of agents, officials, and attorneys.
- c. Any recordings generated under this section shall not be disseminated to agents or prosecutors involved in the conduct of the prosecution of the inmate absent the prior specific written approval of the Attorney General, the Deputy Attorney General or their delegate.
- d. In conducting any such recordings, care shall be taken so as not to conduct recording so as to overhear any meeting between the inmate and his counsel.
- e. The Notice of SAM given to the inmate shall notify the inmate that he is subject to such recording.

9. Cellblock Procedures:

- a. The inmate shall be kept separated from other inmates as much as possible while in the cellblock area.
- b. The inmate shall not be allowed to communicate with any other inmate while in the cellblock area.

10. Commissary Privileges:

- a. The inmate shall not be allowed to obtain or keep items of commissary except those necessary for health and sanitation. Specifically, the inmate shall not be allowed to obtain or retain: combs; condiments or

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spices of any kind; batteries; pens or pencils (other than safety pens--a writing instrument that because of its configuration is difficult to convert into, or to use as, a weapon) or any other objects determined by USMS to be capable of being converted into dangerous instruments.

- b. The inmate shall not be given hot tea, hot coffee, boiling water, or any other liquid at a temperature that can be used to harm other persons nor shall the inmate be given any container in which to store liquids.
- c. The inmate shall be given access to razor blades for shaving under strictly controlled circumstances. The inmate shall request a razor blade only when the inmate intends to shave and only during the hours specified by the Warden.

11. Frequent Cell Searches:

- a. USMS is hereby directed to search the inmate's cell frequently and to take appropriate disciplinary action (including the suspension of telephone privileges) for any infractions.

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